



New SEC Guidance: Asset-Backed Securities

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On May 16, 2025, the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the SEC) issued new and revised Compliance and Disclosure Interpretations (C&DIs) related to public utility securitizations. The updates address form eligibility for public utility securitizations and clarify the SEC staff's position that public utility securitizations structured as series trusts are asset-backed securities.

C&DI question 112.01 was updated to reference 2014 precedent related to public utility securitizations and clarifies which forms are to be used when registering such securities. New C&DI question 112.02 clarifies guidance from a 2007 no-action letter which stated that public utility securitizations structured as series trusts are not "asset-backed securities" for purposes of Item 1101 of Regulation AB. New regulation, particularly the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which created a broader definition of "asset-backed securities" for purposes of the Securities Exchange Act of 1934 and the creation of Forms SF-1 and SF-3 for registering offers and sales of asset-backed securities, made the 2007 guidance outdated and ambiguous. The new CD&I clarifies that public utility securitizations structured as series trusts are asset-backed securities and that issuers should file registration statements on Form SF-1. The full list of C&DIs related to asset-backed securities can be found here: [Link](#)

OTHER RECENT STAFF GUIDANCE

The new C&DI guidance follows the issuance of a no-action letter to the Securities Industry and Financial Markets Association (SIFMA) on May 9, 2025, which sought to clarify certain ambiguities related to compliance with Rule 192 under the Securities Act of 1933, as amended. Rule 192, the securitization conflicts of interest rule, was adopted on November 27, 2023, and prohibits certain "securitization participants," including, among others, underwriters, placement agents, or their affiliates, from engaging in transactions for a specific period of time that would result in a conflict of interest between the securitization participant and an investor in asset-backed securities.

The no-action letter clarifies Rule 192(a)(3)(iii) (the Rule), which is broadly drafted and seeks to prohibit securitization participants from entering into a transaction that is substantially the economic equivalent of a short sale or a credit default swap. The Rule is a catch-all provision intended to cover transactions that are not prohibited under Rules 192(a)(3)(i) (short sales) or (a)(3)(ii) (credit default swaps) but are economically equivalent to the transactions prohibited under those rules. SIFMA argued in its request for no-action relief that "[t]he potential permutations [of the Rule] are

limitless and it is therefore impossible to develop a system that looks across the number and breadths of all trading desks to determine if their trading activity in the aggregate would constitute a potential paragraph (a)(3)(iii) transaction,” because the types of transactions covered by the Rule are “(x) virtually limitless, (y) categorically uncertain and (z) may be indistinct from transactions free of relevant conflicts.”

SIFMA requested that the SEC not recommend enforcement action against a securitization participant under the Rule with respect to transactions entered into by an employee of the securitization participant that is not a part of the relevant asset-backed securities deal team where (1) the securitization participant utilized an information screen between employees on the asset-backed securities deal team and non-deal team employees, (2) the non-deal team employees did not coordinate with the asset-backed securities team in connection with the asset-backed securities or receive information about the asset-backed securities from the deal team, and (3) the non-deal team employees and the deal team employees were not part of a scheme to evade the prohibition against transactions involving material conflicts of interest found in Rule 192(a)(1).

The no-action letter addresses the ambiguity identified by SIFMA in its letter and provides guidance on how to comply with the Rule. Specifically, the no-action letter states that the staff “will not recommend enforcement action . . . with respect to a transaction entered into by a securitization participant related to an asset-backed security . . . where the person entering into such transaction is a Non-Deal Team Employee and the following conditions are satisfied:

1. The Securitization Participant has written policies and procedures in place reasonably designed to:
 1. Prevent the coordination of ABS Deal Teams with Non-Deal Team Employees in connection with the relevant ABS; and
 2. Prevent access to, and receipt of, Restricted ABS Information by Non-Deal Team Employees from ABS Deal Teams; and
2. The Non-Deal Team Employees did not engage in such coordination with ABS Deal Teams and there was no access to, or receipt of, Restricted ABS Information by Non-Deal Team Employees from ABS Deal Teams; and
3. Even if such individuals were in technical compliance with parts (a) and (b) above, they were not part of a plan or scheme to evade the prohibition in Rule 192(a)(1).”

KEY TAKEAWAYS

- Offers and sales of asset-backed securities, including public utility securitizations structured as “series trusts,” should be registered on Form SF-1.
- Securitization participants may utilize information screens between employees to prevent a violation of Rule 192(a)(3)(iii). Securitization participants should consider updating or implementing new procedures to establish information screens that would satisfy the conditions of the no-action letter.
- Compliance with Rule 192 is required for asset-backed security transactions closing after June 9, 2025. The Rule 192 prohibition time frame begins at the time a securitization participant agrees to the material terms of its role in the transaction, meaning that the Rule 192 prohibition currently applies to all asset-backed security transactions currently in process and expected to close on or after June 9, 2025.

Winston’s Capital Markets & Securities Law Watch will continue to monitor developments on SEC guidance and C&DIs, and we will provide our readers with additional updates as they become available.

For more information, or if you have any questions, please contact the authors of this blog post or your regular Winston contacts.

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